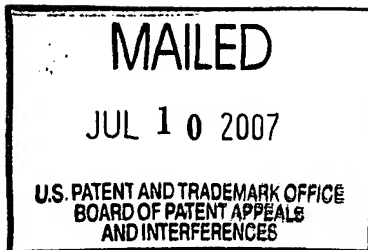


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte: GEORGE TRIANTOPOULOS and KEN BANAS

Application No. 10/047,471

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on June 14, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Appellant filed an Appeal Brief dated November 24, 2003. A review of the Appeal Brief reveals that it is not in compliance with 37 CFR 1.192 {c} {5}, since the required heading is defective (see MPEP 1206, Eighth Ed., Rev. 1, Feb. 2003). The Code of Regulations §1.192 (revised July 1, 2005) states:

- (a) Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken....

- (c) The brief shall contain the following items under appropriate headings and in the order indicated below....

* * *

- (5) Summary of Invention. A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawings, if any, by reference characters.

Section 37 CFR § 1.192(d) states:

- (d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Section 37 CFR 41.37(c)(5) (revised July 1, 2005) states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 1.192(c)(5), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by will suffice.

Appellant may file a paper to correct all the above identified deficiencies. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1205.03 (B) (rev. 3, August 2005) and §711.02(b).

REPLY BRIEF

On June 28, 2005, the Examiner mailed a communication acknowledging receipt of Appellant's Reply Brief, dated March 31, 2004. A review of this communication reveals that The Examiner did not provide proper acknowledgment. The Examiner's comments constitute

Supplemental Examiner's Answer.

Under 37 CFR 1.193(b)(1), appellant may file a reply brief as a matter of right within 2 Months from the mailing date of the examiner's answer or supplemental examiner's answer.... The primary examiner must then either (A) acknowledge receipt and entry of the reply brief ...on form PTOL-90; or (B) reopen prosecution to respond to the reply brief . See MPEP § 1208.02. A supplemental examiner's answer is not permitted unless the application has been remanded by the Board for such purpose.

* * *

While 37 CFR 1.193(b)(1) prohibits a supplemental examiner's answer (in the absence of a remand from the Board of Patent Appeals and Interferences for such purpose), an examiner may (with supervisory patent examiner approval) respond to a reply brief by reopening prosecution.

The Communication acknowledging receipt of the Reply Brief mailed June 28, 2005, did not indicate that the examiner was reopening prosecution, nor was it signed by the supervisory patent examiner (SPE).

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated May 29, 2007. There is no indication on the record that the above Information Disclosure Statement was considered by the examiner. A written communication notifying appellant of the Examiner's consideration is required.

CONCLUSION

Accordingly, it is

Ordered that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed April 29, 2004, defective;
- 2) notify the Appellant to submit a paper which corrects 37 CFR 41.37(c)(2) (revised July 1, 2005);
- 3) issue and mail a PTOL-90 considering any “paper” filed by appellant in response to the notice of defective appeal brief and acknowledging consideration and proper written response to the Information Disclosure Statement dated May 29, 2007;
- 4) vacate the Reply Brief Noted dated June 28, 2005,
- 5) issue a revised Reply Brief Noted properly acknowledging and responding to the Reply Brief mailed March 31, 2004; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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Application No. 10/047,471

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